

# ROUTING AND TRANSMITTAL SLIP

Date

1/22/91

TO: (Name, office symbol, room number,  
building, Agency/Post)

Initials

Date

1. JEAN STARKEY

2.

3.

4.

5.

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

## REMARKS

Enf. Referral.

Pennzoil Products Co

Etowah Terminal

1015 Barlow Drive

Charleston WV 25333

owner/operator: Pennzoil Products Co

Michael S. Ishimoto

point of contact:

Pennzoil Place

P.O. Box 2967

Houston TX 77252-2967

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)

Room No.—Bldg.

Phone No.

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(Red)  
PFL

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region III  
841 Chestnut Building  
Philadelphia, Pennsylvania 19107

SPCC PENALTY DETERMINATION MATRIX

FACILITY NAME PENNZOIL PRODUCTS COMPANY  
ETOWAH TERMINAL CASE # WV-89-009

TYPE OF VIOLATION (circle appropriate number)

1. Failure to prepare Plan (112.3)
2. Failure to have Plan certified (112.3)
3. Failure to implement Plan (112.3)
4. Failure to submit information after spill (112.4)
5. Failure to amend Plan per Regional Administrator (112.4)
6. Failure to implement amendment (112.4)
7. Failure to review Plan every three years (112.5)
8. Failure to amend Plan after review (112.5)
9. Failure to have amendment certified (112.5)
10. Failure to amend Plan after change in design (112.6)
11. Other violations, cited and described as follows:

Failure to construct secondary containment in a manner  
consistent with 40 CFR 112.7; specifically the diked areas  
at this facility did not appear to be sufficiently impervious  
to contain spilled oil.

TOTAL VIOLATIONS 2

NOTE: A MAXIMUM PENALTY will be calculated for EACH VIOLATION.

Each violation may be calculated for the number of days  
in violation - up to a maximum of 1,825 days (5 year  
statutory limit)

PRIOR TO THE PASSAGE OF THE OIL POLLUTION ACT OF 1990 (August 18)  
section 311 (b) (6) of the THE FEDERAL WATER POLLUTION CONTROL  
ACT (Clean Water Act or CWA) provided for the following:

(page 121, subsection (j)) ...Any owner or operator of an on-  
shore facility and any other person subject to any regulation  
issued under paragraph (1) of subsection (j) who fails or refuses  
to comply with the provisions of any such regulations, shall be  
liable to a civil penalty of not more than \$5,000 for each such  
violation (per day, as interpreted).

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Section 4301 (b) (6) of the OIL POLLUTION ACT amends section 311 (b) of the CWA by striking paragraph (6) and inserting new paragraphs which provide for CLASS I and CLASS II civil penalties (see pages 53 and 54 of the Conference Report for details).

\*\*\*\*\*

CLASS I - MAY NOT EXCEED \$10,000 per VIOLATION except that the maximum amount of any class I civil penalty SHALL NOT EXCEED \$25,000.

CLASS II - MAY NOT EXCEED \$10,000 per DAY for each day during which the violation continues; except that the maximum amount of any class II civil penalty SHALL NOT EXCEED \$125,000.

JUDICIAL - In addition to, or in lieu of, assessing a CLASS I or CLASS II civil penalty, the President may request the Attorney General to secure such relief as necessary to compel compliance with section 1016, (of OPA) including a JUDICIAL ORDER terminating operations.

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NOTE: ANY VIOLATION PRIOR TO AUGUST 18, 1990 WILL BE CALCULATED AS A PRE-OPA PENALTY.

For violations which are sited AFTER August 18, 1990:

- VIOLATIONS which EXCEED one year or other factors MAY be subject to a HIGHER CLASSIFICATION of PENALTY and/or referred to a JUDICIAL PENALTY based upon a CASE-BY-CASE review.

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CLASS I - GRAVITY OF VIOLATION MATRIX = 1 to 25

CLASS II - GRAVITY OF VIOLATION MATRIX = 25 to 50

\*\*\*\*\*

(see next 2 pages for the GRAVITY OF VIOLATION MATRIX)

GRAVITY OF VIOLATION MATRIX  
(circle appropriate points)

A. STORAGE CAPACITY IN GALLONS (Aboveground) 4,000,000 POINTS  
(Be sure to convert barrels to gallons if necessary)

a.	none-----	0
b.	< 1,000-----	1
c.	1,000 - 5,000-----	2
d.	5,000 - 10,000-----	3
e.	10,000 - 25,000-----	4
f.	25,000 - 50,000-----	5
g.	50,000 - 100,000-----	6
h.	100,000 - 250,000-----	7
i.	250,000 - 500,000-----	8
j.	500,000 - 1,000,000-----	9
<u>k.</u>	> 1,000,000-----	<u>10</u>
TOTAL POINTS -----		<u>10</u>

B. STORAGE CAPACITY IN GALLONS (Underground)

<u>a.</u>	none-----	<u>0</u>
b.	<42,000-----	1
c.	>42,000-----	2
TOTAL POINTS -----		<u>0</u>

C. SPILL HISTORY (matrix points per spill, three-year history)

a.	None-----	( 0 point x # spills ( <u>1</u> ) past 3 years)	<u>1</u>
b.	Minor-----	( 1 point x # spills ( <u>1</u> ) past 3 years)	<u>1</u>
c.	Medium-----	( 2 points x # spills ( ) past 3 years)	
d.	Major-----	( 3 points x # spills ( ) past 3 years)	
TOTAL POINTS -----			<u>1</u>

NOTE: FOR INLAND WATERS:

MINOR DISCHARGE = less than 1,000 gallons  
MEDIUM DISCHARGE = 1,000 gallons to 10,000 gallons  
MAJOR DISCHARGE = greater than 10,000 gallons

FOR COASTAL WATERS:

MINOR DISCHARGE = less than 10,000 gallons  
MEDIUM DISCHARGE = 10,000 to 100,000 gallons  
MAJOR DISCHARGE = greater than 100,000 gallons

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D. DISTANCE TO NAVIGABLE WATERS (estimated in yards)  
(Be sure to convert feet to yards if necessary)

POINTS

a.	< 25	-----	5
b.	25 - 50	-----	4
c.	50 - 100	-----	3
d.	100 - 1000	-----	2
e.	> 1000	-----	1

TOTAL POINTS 5

E. POTENTIAL THREATS

a.	Public Health/Welfare	-----	5
b.	Sensitive Ecosystem/Endangered Species	-----	4
c.	Surface Water	-----	3
d.	Vegetation/Wildlife	-----	2
e.	Shorelines	-----	1

TOTAL POINTS 3

F. TYPE OF FACILITY (any combination of the following)  
(see 40 CFR, part 112, Appendix, Section II -  
Definitions - page 29)

a.	Oil Production (includes drilling operations)	-----	5
b.	Industrial (includes refineries)	-----	5
c.	Oil Storage	-----	4
d.	Commercial (sale, distribution, etc.)	-----	3
e.	Waste Treatment (recycle, dispose, o/w separator, etc.)	-----	2
f.	Agricultural (farm etc.)	-----	1
g.	Public (school, library, etc.)	-----	1

TOTAL POINTS 7

TOTAL MATRIX POINTS (TMP) = 26  
(A+B+C+D+E+F)

THEREFORE:

THE MAXIMUM PENALTY IS CALCULATED AS FOLLOWS:  
(SEE NEXT PAGE)

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# MAXIMUM PENALTY

Penalty Classifications  
(check appropriate classification)

$$\checkmark \text{ Pre-OPA} = \frac{100 \text{ }^{\text{00}}}{( \$100.00 )} \times \frac{1825}{(\text{days})} \times \frac{26/50}{(\text{TMP}/50)} =$$

~~MAXIMUM PENALTY~~

NOTE: The dollars/day (\$100.00) for each penalty is based upon a maximum penalty of \$9,125,000, divided by the statutory limit of 1,825 days to a maximum of 50 matrix points. Therefore the GRAVITY OF THE VIOLATION (TMP/50) is calculated as TOTAL MATRIX POINTS divided by 50.

The above formula will ONLY be used for PRE-OPA cases. The OPA cases below will be calculated as follows:

CLASS I = \$10,000 per penalty (max. \$25,000)  
CLASS II = \$10,000 per day (max. \$125,000)  
JUDICIAL = greater than \$125,000 proposed maximum

A MAXIMUM PENALTY WILL BE CALCULATED FOR EACH VIOLATION

## WORKSHEET

VIOLATION #1 FAILURE TO REVIEW PLAN:

PLAN DTD: 6/30/83  
REVIEWS DUE: 6/30/86  
6/30/89

VIOLATION #2 FAILURE TO HAVE SUFFICIENTLY IMPERMEABLE Dikes.

PLAN DATED 6/30/83 = 6 years  
INSPECTION 8/1/89  
5 year statutory limit = 1825 days

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WORKSHEET (continued)

COMMENTS:

VIOLATION NUMBER 1	@	MAXIMUM PENALTY =	<u>\$ 104<sup>00</sup></u>
VIOLATION NUMBER 2	@	MAXIMUM PENALTY =	<u>94900<sup>00</sup></u>
VIOLATION NUMBER 3	@	MAXIMUM PENALTY =	<u>                    </u>
etc. etc. etc.			
TOTAL MAXIMUM PENALTY = \$			<u>\$ 95,004<sup>00</sup></u>
(1+2+3 etc.)			

Red;  
PFE

PROPOSED PENALTY, MITIGATION, WITHDRAWAL, SETTLEMENT FACTORS

A. GRAVITY FACTOR REDUCTION:

- 1 - 10 matrix points = up to 90% reduction factor
- 11 - 20 matrix points = up to 80% reduction factor
- 21 - 30 matrix points = up to 70% reduction factor
- 31 - 40 matrix points = up to 60% reduction factor
- 41 - 50 matrix points = up to 50% reduction factor
- > 50 matrix points = up to 40% reduction factor

GRAVITY FACTOR REDUCTION = 70 %

B. GOOD FAITH EFFORTS/EXPEDITIOUS COMPLIANCE (after inspection)

CAME INTO COMPLIANCE		REDUCTION FACTOR
<u>1-2 months</u>	=	up to 90%
2-4 months	=	up to 80%
4-6 months	=	up to 70%
6-8 months	=	up to 60%
8-10 months	=	up to 50%
10-12 months	=	up to 40%
efforts to come into compliance	=	up to 30%
no effort to come into compliance	=	N/A

GOOD FAITH REDUCTION = \_\_\_\_\_ %

PROPOSED PENALTY CALCULATION:

$$\begin{array}{r} \$ \underline{95,004} \\ \text{maximum penalty} \end{array} - \$ \frac{\underline{66,502}}{(\text{A}\%)} = \$ \frac{\underline{28,502}}{\text{"A" max.}} - \frac{\underline{25,652}}{(\text{B}\%)} =$$

WORKSHEET

$$\begin{array}{r} \text{A}\% = \\ \$ \underline{95,004} \\ \text{max. penalty} \end{array} \times \frac{\underline{70}}{\text{A}\%} \% = \$ \underline{66,502}$$

(SEE

$$\begin{array}{r} \text{B}\% = \\ \$ \underline{28,502} \\ \text{"A" max.} \end{array} \times \frac{\underline{90}}{\text{B}\%} \% = \$ \underline{25,652}$$

BELOW)

PROPOSED PENALTY = \$ 28,502

C. OTHER FACTORS WHICH MAY BE APPLIED

Percent reduction and/or incremental increase to be assigned on a case by case basis based upon site specific information observed during SPCC Plan review and/or facility inspection, ability to pay proposed penalty, and/or other factors.

MITIGATED/SETTLED PENALTY =

proposed penalty + \_\_\_\_\_ (C%) = \$ \_\_\_\_\_